(4) Certify that the requesting party has served a true and complete copy of the request upon the petitioner and the applicant by certified or registered mail (return receipt requested) or by personal delivery.

(c) The request shall state whether the requesting party seeks a hearing within 30 days or 60 days of FDA's receipt of the request.

[53 FR 7305, Mar. 7, 1988, as amended at 67 FR 9585, Mar. 4, 2002]

§ 60.42 Notice of hearing.

Ten days before the hearing, FDA will notify the requesting party, the applicant, and the petitioner, orally or in writing, of the date, time, and location of the hearing. The agency will provide the requesting party, the applicant, and the petitioner with an opportunity to participate as a party in the hearing.

§ 60.44 Hearing procedures.

The due diligence hearing shall be conducted in accordance with this part, supplemented by the nonconflicting procedures in part 16. During the due diligence hearing, the applicant and the petitioner shall enjoy all the rights and privileges accorded a person requesting a hearing under part 16. The standard of due diligence set forth in §60.36 will apply in the due diligence hearing. The party requesting the due diligence hearing shall have the burden of proof at the hearing.

§ 60.46 Administrative decision.

Within 30 days after the completion of the due diligence hearing, the Commissioner will affirm or revise the determination made under §60.34(a) and will publish the due diligence redetermination in the FEDERAL REGISTER, notify PTO of the redetermination, and send copies of the notice to PTO and to the requesting party, the applicant, and the petitioner.

PART 70—COLOR ADDITIVES

Subpart A—General Provisions

Sec.

Subpart B—Packaging and Labeling

Subpart C—Safety Evaluation

AUTHORITY: 21 U.S.C. 321, 341, 342, 343, 348, 351, 360b, 361, 371, 379e.

SOURCE: 42 FR 15636, Mar. 22, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 70.3 Definitions.

(a) *Secretary* means the Secretary of Health and Human Services.

(b) *Department* means the Department of Health and Human Services.

(c) *Commissioner* means the Commissioner of Food and Drugs.

(d) *Act* means the Federal Food, Drug, and Cosmetic Act as amended.

(e) *Color Certification Branch* means the unit established within the Food and Drug Administration located in the Center for Food Safety and Applied Nutrition, charged with the responsibility for the mechanics of the certification procedure hereinafter described, and including the examination of samples of color additives subject to certification.

(f) A *color additive* is any material, not exempted under section 201(t) of the act, that is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source and that, when added or applied to a food, drug, or cosmetic or to the human body or any part thereof, is capable (alone or

through reaction with another substance) of imparting a color thereto. Substances capable of imparting a color to a container for foods, drugs, or cosmetics are not color additives unless the customary or reasonably foreseeable handling or use of the container may reasonably be expected to result in the transmittal of the color to the contents of the package or any part thereof. Food ingredients such as cherries, green or red peppers, chocolate, and orange juice which contribute their own natural color when mixed with other foods are not regarded as *color additives*; but where a food substance such as beet juice is deliberately used as a color, as in pink lemonade, it is a *color additive*. Food ingredients as authorized by a definitions and standard of identity prescribed by regulations pursuant to section 401 of the act are *color additives,* where the ingredients are specifically designated in the definitions and standards of identity as permitted for use for coloring purposes. An ingredient of an animal feed whose intended function is to impart, through the biological processes of the animal, a color to the meat, milk, or eggs of the animal is a color additive and is not exempt from the requirements of the statute. This definition shall apply whether or not such ingredient has nutritive or other functions in addition to the property of imparting color. An ingested drug the intended function of which is to impart color to the human body is a *color additive*. For the purposes of this part, the term *color* includes black, white, and intermediate grays, but substances including migrants from packaging materials which do not contribute any color apparent to the naked eye are not *color additives*.

(g) For a material otherwise meeting the definition of *color additive* to be exempt from section 721 of the act, on the basis that it is used (or intended to be used) solely for a purpose or purposes other than coloring, the material must be used in a way that any color imparted is clearly unimportant insofar as the appearance, value, marketability, or consumer acceptability is concerned. (It is not enough to warrant exemption if conditions are such that the primary purpose of the material is other than to impart color.)

(h) The exemption that applies to a pesticide chemical, soil or plant nutrient, or other agricultural chemical, where its coloring effect results solely from its aiding, retarding, or otherwise affecting directly or indirectly, the growth or other natural physiological processes of produce of the soil, applies only to color developed in such product through natural physiological processes such as enzymatic action. If the pesticide chemical, soil or plant nutrient, or other agricultural chemical itself acts as a color or carries as an ingredient a color, and because of this property colors the produce of the soil, it is a *color additive* and is not exempt.

(i) *Safe* means that there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive.

(j) The term *straight color* means a color additive listed in parts 73, 74, and 81 of this chapter, and includes lakes and such substances as are permitted by the specifications for such color.

(k) The term *mixture* means a color additive made by mixing two or more straight colors, or one or more straight colors and one or more diluents.

(l) The term *lake* means a straight color extended on a substratum by adsorption, coprecipitation, or chemical combination that does not include any combination of ingredients made by simple mixing process.

(m) The term *diluent* means any component of a color additive mixture that is not of itself a color additive and has been intentionally mixed therein to facilitate the use of the mixture in coloring foods, drugs, or cosmetics or in coloring the human body. The diluent may serve another functional purpose in the foods, drugs, or cosmetics, as for example sweetening, flavoring, emulsifying, or stabilizing, or may be a functional component of an article intended for coloring the human body.

(n) The term *substratum* means the substance on which the pure color in a lake is extended.

(o) The term *pure color* means the color contained in a color additive, exclusive of any intermediate or other

component, or of any diluent or substratum contained therein.

(p) The term *batch* means a homogeneous lot of color additive or color additive mixture produced by an identified production operation, which is set apart and held as a unit for the purpose of obtaining certification of such quantity.

(q) The term *batch number* means the number assigned to a batch by the person who requests certification thereof.

(r) The term *lot number* means an identifying number or symbol assigned to a batch by the Food and Drug Administration.

(s) The term *area of the eye* means the area enclosed with in the circumference of the supra-orbital ridge and the infra-orbital ridge, including the eyebrow, the skin below the eyebrow, the eyelids and the eyelashes, and conjunctival sac of the eye, the eyeball, and the soft areolar tissue that lies within the perimeter of the infra-orbital ridge.

(t) The term *package* means the immediate container in which a color additive or color additive mixture has been packed for shipment or delivery. If the package is then packed in a shipping carton or other protective container, such container shall not be considered to be the immediate container. In the case of color additive mixtures for household use containing less than 15 percent pure color, when two or more containers of 3 ounces each or less, each containing a different color, are distributed as a unit, the immediate container for such unit shall be considered to be the package as defined in this section.

(u) The *hair dye* exemption in section 601(a) of the act applies to coal tar hair dyes intended for use in altering the color of the hair and which are, or which bear or contain, color additives derived from coal tar with the sensitization potential of causing skin irritation in certain individuals and possible blindness when used for dyeing the eyelashes or eyebrows. The exemption is permitted with the condition that the label of any such article bear conspicuously the statutory caution and adequate directions for preliminary patch-testing. The exemption does not apply to coloring ingredients in hair dyes not derived from coal tar, and it does not extend to poisonous or deleterious diluents that may be introduced as wetting agents, hair conditions, emulsifiers, or other components in a color shampoo, rinse, tint, or similar dual-purpose cosmetic that alter the color of the hair.

(v) The terms *externally applied drugs* and *externally applied cosmetics* mean drugs or cosmetics applied only to external parts of the body and not to the lips or any body surface covered by mucous membrane.

[42 FR 15636, Mar. 22, 1977, as amended at 61 FR 14478, Apr. 2, 1996]

§ 70.5 General restrictions on use of color additives.

(a) *Color additives for use in the area of the eye.* No listing or certification of a color additive shall be considered to authorize the use of any such color additive in any article intended for use in the area of the eye unless such listing or certification of such color additive specifically provides for such use. Any color additive used in or on any article intended for use in the area of the eye, the listing or certification of which color additive does not provide for such use, shall be considered to be a color additive not listed under parts 73, 74, and 81 of this chapter, even though such color additive is certified and/or listed for other uses.

(b) *Color additives for use in injections.* No listing or certification of a color additive shall be considered to authorize the use of any such color additive in any article intended for use in injections unless such listing or certification of such color additive specifically provides for such use. Any color additive used in or on any article intended for use in injections, the listing or certification of which color additive does not provide for such use, shall be considered to be a color additive not listed under parts 73, 74, and 81 of this chapter, even though such color additive is certified and/or listed for other uses.

(c) *Color additives for use in surgical sutures.* No listing or certification of a color additive shall be considered to authorize the use of any such color additive in any article intended for use as a surgical suture unless such listing or